IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.1462 OF 2004

The Nashik Merchants Co-op
Bank Ltd. & Ors. ...Petitioners

Vs.

Sanjay Motilal Jain ...Respondent

WRIT PETITION NO. 1463 OF 2004

The Nashik Merchants Co-op
Bank Ltd. & Ors. ...Petitioners

Vs.

Deelip Motilal Jain ...Respondent

Mr. P.N.Joshi for the Petitioners in both the Petitions.
Mr. Uday Warunjikar for the Respondent in both the Petitions.

CORAM: A.S.OKA, J.

DATED: JANUARY 27,2006.

P.C.:

1. By order dated 1st March 2004 notice for final disposal was issued by this Court. Accordingly, I have taken up the Petition for final disposal. As facts of both the Petitions are identical, for the sake of the convenience, reference is made to the Writ Petition No.1463 of 2004.

2. A certificate under section 101 of the Maharashtra Co-operative Societies Act, 1960 (hereinafter referred to as the said Act) was issued in favour of the petitioner No.1 against the Respondent. The Respondent filed a dispute under

Section 91 of the said Act in Cooperative Court for a declaration that the Respondent is not liable to pay any amount as mentioned in the recovery certificate under Section 101 of the said Act and for consequential perpetual injunction restraining the Petitioners from taking any action for recovery of the amount under recovery certificate. By order dated 18th June 2003, the learned Judge of the Cooperative Court dismissed the dispute by holding that the same was not maintainable. The Respondent filed a Revision Application for challenging the order of the learned Judge of the Cooperative Court. The Revision Application was allowed by the learned President of the Maharashtra State Cooperative Appellate Court by passing the following operative part of the order :

. "On the Applicants' depositing Rs.10,000/- on or before 30th October 2003, the Bank shall release the seized vehicle along with documents of the vehicle if same were found on the vehicle on the date of seizure and on the Applicants' depositing Rs.1.70 Lac on or before 31st December 2003 with the Bank, the revisions shall stand allowed and the order of the Lower Court shall stand set aside.

. In case of any default, the revisions shall stand dismissed.

. In case of compliance of the above order the parties shall appear before the Lower Court on 6th January 2004 when the Applicants shall make their submissions on the point of maintainability without insisting on framing a preliminary issue etc."

It is this order of the Maharashtra State Cooperative Appellate Court which is impugned in this Petition.

3. The learned Counsel for the Petitioners submitted that the dispute filed by the Respondent was not maintainable in view of the decision of the Division Bench of this Court reported in 2003 Vol.105(3) Bom.L.R. page 893 (Sau.Vasundhara Ashokrao Patil Vs. Rajaram Bapu Sahakari Bank Ltd.Sangli and others). He pointed out that the learned Judge of the Cooperative Court dismissed the dispute on the ground that there was lack of jurisdiction and the learned President of the Maharashtra State Cooperative Appellate Court while allowing the Revision Application has not gone into the merits of the said conclusion arrived at by the learned Judge of the Cooperative Court. The learned Counsel for the Respondent submitted that the Respondent has complied with the conditional order passed by the learned President of the Maharashtra State Cooperative Appellate Court by depositing the requisite amount. He submitted that the issue regarding maintainability of the dispute is kept open which

can be agitated by the Petitioners before the learned Judge of Cooperative Court. He submitted that no interference is called for. By way of reply, the learned Counsel for the Petitioners denied the correctness of the statement made by the learned Counsel for the Respondent to the effect that the amount as directed by the Appellate Court has been deposited by the Respondent.

4. I have considered the submissions. Perusal of the copy of the dispute filed by the Respondent under Section 91 of the said Act clearly shows that the challenge is to the Recovery Certificate under Section 101 of the said Act granted in favour of the Petitioner No.1-Bank. The decision of the Division Bench of this Court in case of Sau.Vasundhara (supra) holds that the dispute under section 91 of the said Act for challenging the certificate under Section 101 of the said Act is not maintainable. The only remedy available is to file a revision Application under Section 154 of the said Act. In view of the decision of the Division Bench of this Court, the learned Judge of the Cooperative Court was right in dismissing the dispute as not maintainable. When the dispute was dismissed as not maintainable, the learned President of the Appellate Court could not have reversed the decision of the Cooperative Court without deciding the issue of jurisdiction of the Court to entertain and decide the dispute as the law on the said point is no longer res integra. In my view, the impugned order passed by the Appellate Court is erroneous and deserves to be quashed and

set aside.

5. Shri Warunjikar for the Respondent at this stage pointed out that the Respondent in both the Petitions had filed Revision Applications under Section 154 of the said Act for challenging the certificate under section 101 of the said Act. He submitted that the order passed in this Petition should not come in the way of the Respondent in challenging the orders passed in the Revision Applications.

6. Hence I pass the following order in both the Petitions:

i) Impugned Judgment and Order passed by the learned President of the Maharashtra State Cooperative Appellate Court is quashed and set aside. Revision Application filed by the Respondent before the Maharashtra State Cooperative Appellate Court stands dismissed and consequently the Judgment and Order dated 18th June 2003 passed by the learned Judge of the Cooperative Court, Nashik is restored.

ii) The order passed in this petition will not preclude the Respondent from challenging the orders passed by the Revisional Authority in Revision Application preferred by the Respondent under Section 154 of the said Act for challenging the certificates under section 101 of the said Act.

iii) No order as to costs.

. Parties to act upon an authenticated copy of this order.

Judge.